

OREGON COASTAL NONPOINT PROGRAM
NOAA/EPA PROPOSED FINDING
Draft 10/20/14

C. ADDITIONAL MANAGEMENT MEASURES - FORESTRY

PURPOSE OF MANAGEMENT MEASURE: The purpose of this management measures is to identify additional management measures necessary to achieve and maintain applicable water quality standards and protect designated uses for land uses where the 6217(g) management measures are already being implemented under existing nonpoint source programs but water quality is still impaired due to identified nonpoint sources.

CONDITION FROM JANUARY 1998 FINDINGS: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the 6217(g) measures.

PROPOSED FINDING:

(This finding is for all the additional management measures for forestry, not just pesticides. I'm leaving this blank.)

RATIONALE:

The federal agencies' January 13, 1998, conditional approval findings noted that Oregon had published forest practices rules that require buffer zones for most pesticide applications (OAR 629-620-0400(7)(b)). However, these rule changes did not address aerial application of herbicides along non-fish bearing streams. NOAA and EPA determined that stream spray buffers for the aerial application of herbicides on non-fish bearing streams on forestlands were inadequate and should be strengthened to attain water quality standards and fully support beneficial uses.

Since its 1998 conditional approval findings, Oregon has provided several documents describing the programs it relies on to manage pesticides, most recently in March 2014. In addition to the FPA rule buffers noted above, the state also addresses pesticide issues through the Chemical and Other Petroleum Product Rules (OAR 629-620-0000 through 800), Pesticide Control Law (ORS 634), best management practices set by the ODA, and federal pesticide label requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as well as the state's Water Quality Pesticide Management Plan¹ and Pesticide Stewardship Partnership. In its March 2014 submittal, Oregon noted that it specifically relies on best management practices set by ODA and EPA under FIFRA for the protection of small non-fish bearing streams. Given the lack of monitoring for aerial application of herbicides on non-fish bearing streams in Oregon's coastal forestlands and the potential for adverse water quality and designated use impacts from the aerial

¹ ODA, ODEQ, ODF, and OHA. 2011. *Pesticide Management Plan for Water Quality Protection*.

application of herbicides, NOAA and EPA continue to believe that Oregon should take additional steps to ensure non-fish bearing streams are adequately protected during the aerial application of herbicides. Aerial application of herbicides, such as glyphosate, 2,4-D, atrazine, and others, is a common practice in the forestry industry. Herbicides are sprayed to control weeds on recently harvested parcels to prevent competition with newly planted tree saplings. Within the coastal nonpoint management area, non-fish bearing streams comprise 60 to 70 percent of the total stream length. Oregon does not require riparian buffers during forest harvests along non-fish bearing streams, which might otherwise provide a spray buffer. Furthermore, there are no riparian buffers to filter herbicide-laden runoff before it enters the streams.

Ex. 5 - Attorney Client

Research has shown that the aerial application of herbicides may adversely impact water quality and salmon. As discussed in EPA's *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*³, the condition for forest chemical management is to "use chemicals when necessary for forest management in accordance with the following to reduce nonpoint source pollution impacts due to the movement of forest chemicals off-site during and after application: (4) Establish and identify buffer areas for surface waters. (This is especially important for aerial applications.)" EPA's 1993 Guidance cites studies from various sources on aerial application of herbicides. Norris and Moore (1971)⁴, observed the concentration of 2,4-D in streams was one to two orders of magnitude higher in forestry operations without buffers than

² NMFS. 2011. *National Marine Fisheries Service Endangered Species Act Section 7 Consultation Biological Opinion Environmental Protection Agency Registration of Pesticides 2,4-D, Triclopyr BEE, Diuron, Linuron, Captan, and Chlorothalonil*. NOAA National Marine Fisheries Service, June 30, 2011.

³ EPA, 1993. *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*. EPA 840-B-92-002. Environmental Protection Agency, January 1993.

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in areas with buffers. Riekirk and others (1989)⁵ found that the greatest risk to water quality from forestry pesticide application was from aerial application and drift, runoff, and erosion. Norris et al (1991)⁶ compiled information from studies done from 1967-1987 that measured herbicides including 2,4-D, picloram, hexazinone, atrazine, triclopyr, glyphosate, and dalapon.

There have been few peer-reviewed studies that have specifically evaluated the extent and effects of aerial application of herbicides in Oregon's coastal nonpoint management area and none on non-fish bearing streams in Oregon's coastal nonpoint management area. Studies in Oregon have found positive detections of hexazinone and 2,4-D ester in water after aerial application⁷. These levels have been below thresholds of concern determined in the studies for people and aquatic life. ODF's Dent and Robben 2000 Study monitored herbicides and fungicides along Type F (fish-bearing) and Type D (drinking water) streams to assess the effectiveness of the FPA pesticide management practices at protecting water quality during drift application.⁸ Of 26 sites sampled 24 hours after application, all herbicides detected were at concentrations of less than 1 ppb, below the minimum exposure thresholds for humans and aquatic life. They concluded that the FPA's practices were effective at protecting water quality for Types F and D streams. However, they note they could not draw any conclusions about the FPA's effectiveness at protecting water quality for non-fish bearing streams during the aerial application of herbicides. In a 2012 USGS study⁹ in the McKenzie River of the Clackamas Basin outside the coastal zone management area, 43 out of 175 compounds were detected at least once across 28 sites. The study focused on urban, forestry, and agricultural land uses. Nine pesticides were detected out of 14 samples from the drinking water facility's intake from 2002 to 2010. However, concentrations were low, less than 1 part per billion, and the largest number of pesticide detections were associated with urban stormwater. This study was conducted outside the coastal zone management area.

Non-peer-reviewed studies also did not focus on aerial application of herbicides on non-fish bearing streams in forestlands. The Oregon Health Authority's Exposure Investigation (EI) on the Highway 36 Corridor included herbicide samples in water, food, plants, and people. While herbicides have been detected in blood and urine samples, it is not possible to confirm whether these exposures resulted from the aerial application of pesticides or from another source. Low levels of herbicides applied during aerial applications were found in 10 soil samples, but no

5 Riekirk.H. 1989. *Forest Fertilizer and Runoff Water Quality*. In Soil and Crop Science Society of Florida Proceedings, September 20-22, 1988, Marco Island, FL, 5

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herbicides were found in drinking water samples¹⁰. However, the Study noted that herbicide samples were not collected during the primary time of spraying.

OODF's paired watershed study on the Alsea subbasin also found that while some herbicides were detected, they were not at levels that would pose a significant risk to humans or aquatic life.¹¹ Following the aerial application of herbicides over a non-fish bearing stream segment that did not have riparian buffers, the researchers measured herbicide concentrations at three locations below the application site: at the fish/non-fish bearing stream interface in the middle of the harvest unit; at the bottom of the harvest unit; and well below the harvest unit. Of the five herbicides that were applied, only glyphosate was detected in any of the samples. An initial pulse of glyphosate, ranging from about 40 to 60 ng/L (ppt), was recorded at the fish/no-fish interface site shortly after spraying but matched concentrations observed at the other two sites (approximately 25 ng/L) after three days. A clear pulse of approximately 115 ng/L (ppt) was recorded at the bottom of the harvest unit during a storm event that occurred eight days after application and another clear pulse of approximately 42 ng/L (ppt) was observed at the interface site during a second storm event ten days after spraying. All glyphosate concentrations recorded throughout the study period were orders of magnitude less than what the literature reported as the lowest observable effect for a variety of aquatic species. However, like the earlier ODF assessment, no samples were taken from a non-fish bearing stream segment that was directly under the application site. The water quality impacts to the non-fish bearing stream segment are unknown although one would expect to find higher concentrations of herbicides.

Oregon asserts it relies on the national best management practices established through the federal FIFRA pesticide labels to protect non-fish bearing streams. Currently, EPA, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture are working to improve the national risk assessment process to include all ESA-listed species when registering all pesticides, including herbicides. Given the scale of this undertaking, the federal agencies are employing a phased, iterative approach over the next 15 years to make the changes, and it is expected that herbicide labels will not be updated until the end of the 15-year process. This ongoing federal process, however, should not preclude Oregon from making needed state-level improvements to how it manages herbicides in the context of its forestry landscape and sensitive species.

Oregon and other Pacific Northwest states have recognized the need to go beyond the national FIFRA label requirements to protect water quality and aquatic species, including salmon, in their state¹². Oregon has 60-foot spray buffers for non-biological insecticides and fungicides on non-fish bearing streams (OAR 629-620-400(7)) and 60-foot spray buffers for herbicides on wetlands, fish-bearing and drinking water streams (OAT 629-620-400(4)). Compared to

¹⁰ Oregon Health Authority. Undated. Draft Final. *Public Health Assessment Highway 36 Corridor Exposure Investigation*.

¹¹ National Council for Air and Stream Improvement. 2013. *Measurement of Glyphosate, Imazapyr, Sulfometuron methyl, and Mmetfulfuron methyl in Needle Branch Streamwater*. Special Report No. 130-1.

¹² Peterson, Erik. EPA. 2011. Memo to Scott Downey, EPA and David Powers, EPA re: *Comparative Characterization of Pacific Northwest Forestry Requirements for Aerial Application of Pesticides*. August 30, 2011.

neighboring coastal states and jurisdictions, Oregon has the smallest forestry-specific water resource buffers for herbicides on non-fish bearing streams. For smaller non-fish bearing streams, Washington maintains a 50-foot riparian and spray buffer (WAC-222-38-040). Idaho has riparian and spray buffers for non-fish bearing streams of 100 feet (IAR 20-02-01). California has riparian buffers for non-fish bearing streams (**), which implicitly restrict the aerial application of herbicides near the stream.

With a lack of information about the specific impacts of herbicide spraying over non-fish bearing streams in Oregon and the scientific literature that shows a potential for negative effects, Oregon needs to ensure that it is providing adequate protections for non-fish bearing streams associated with the aerial application of herbicides.

Oregon has taken many steps in this direction. ODF requires that all pesticide applicators complete a notification form of potential pesticides that may be applied, the stream segments for pesticide application, the window of time in which application may occur, and a reminder of the spray buffers for fish-bearing and drinking water streams that may apply. While ODF's notification form specifically identifies guidance on spray buffers in the FPA, it is silent on Type N streams, presumably relying on FIFRA regulations. ODF's notification form allows a full list of pesticides that the applicator may use, so it is difficult to determine which pesticide will be and is actually applied. ODF also works with ODA to require pesticide applicators to undergo training and obtain licenses prior to being allowed to spray pesticides. Part of the training includes a review of regulations and requirements for protecting streams during aerial application. To reduce aerial drift, Oregon has guidance that instructs applicators to consider temperature, relative humidity, wind speed, and wind direction. For pesticide monitoring, there is currently no monitoring for aerial application of herbicides on non-fish bearing streams in forestland in the coastal nonpoint management area. However, Oregon plans to increase monitoring pesticides on forestlands in the coastal nonpoint management area. Oregon agencies also regularly coordinate through the

Oregon has taken independent steps to further address pesticide water quality issues. In 2007, key state agencies, including ODA, ODF, ODEQ, and the Oregon Health Authority, worked together to develop an interagency Water Quality Pesticide Management Plan to guide State-wide and watershed-level actions to protect surface and groundwater from potential impacts of pesticides, including herbicides. The plan, approved by EPA Region 10 in 2011, focuses on using water quality monitoring data as the driver for adaptive management actions. The plan describes a continuum of management responses, ranging from voluntary to regulatory actions the state could take to address pesticide issues. If water quality concerns cannot be addressed through the collaborative, interagency-effort, regulatory actions are taken using existing agency authorities.

As outlined in the plan, the State's Pesticide Stewardship Partnership (PSP) Program is the primary mechanism for addressing pesticide water quality issues at the watershed level. Through the partnership, the ODEQ works with State and local partners to collect and analyze water

samples and use the data to focus technical assistance and best management practices on streams and pesticides that pose a potential aquatic life or human health impact.

NOAA and EPA acknowledge the progress Oregon has made in its establishment of a multi-agency management team, development of its Water Quality Pesticide Management Plan, and implementation of its PSP Program. However, the federal agencies note that water quality monitoring data on pesticides is still limited in the State, and that Oregon has only established eight PSP monitoring areas in seven watersheds, none of which are within the coastal nonpoint management area. While NOAA and EPA recognize that the PSP program targets the most problematic or potentially problematic watersheds, and Oregon received recent funding to expand into two new watersheds, the agencies believe that if monitoring data are to drive adaptive management, the State should develop and maintain more robust and targeted studies of the effectiveness of its pesticide monitoring and best management practices within the coastal nonpoint management area. Moreover, the federal agencies encourage the State to design its monitoring program in consultation with EPA and NMFS so that it generates data that are also useful for EPA pesticide registration reviews and NMFS biological opinions that assess the impact of EPA label requirements on listed species.

In addition to a more robust, overall monitoring program for herbicides and other pesticides and to fully address the concerns NOAA and EPA raised in the 1998 conditional approval findings, Oregon may be able to achieve greater protection of non-fish bearing streams during the aerial application of herbicides through regulatory or voluntary approaches. An example of a regulatory approach would be to institute spray buffers for the aerial application of herbicides along non-fish bearing streams similar to neighboring states. Another option would be to institute riparian buffers along non-fish bearing streams, which, by default, would also provide a buffer during the aerial application.

Oregon could also institute voluntary programs, backed by enforceable authorities. These voluntary efforts could build on existing programs. Elements of the voluntary program could include, but is not limited to the following: :

- Develop more specific guidelines for voluntary buffers or buffer protections for the aerial application of herbicides on non-fish bearing streams.
- Educate and train aerial applicators of herbicides on the new guidance and how to minimize aerial drift to waterways, including non-fish bearing streams, and surrounding communities;
- Revise the ODF Notification of Operation form required prior to chemical applications on forestlands to include a check box for aerial applicators to indicate they must adhere to FIFRA labels for all stream types, including non-fish bearing streams;
- Track the implementation of voluntary measures for the aerial application of herbicides along non-fish bearing streams and assess the effectiveness of these practices to protect water quality and designated uses;

- Conduct direct compliance monitoring for FIFRA label requirements related to aerial application of herbicides in forestry;
- Provide better maps of non-fish bearing streams and other sensitive sites and structures to increase awareness of these sensitive areas that need protection among the aerial applicator community; and
- Employ GPS technology, linked to maps of non-fish bearing streams to automatically shut off nozzles before crossing non-fish bearing streams.

If Oregon chooses a voluntary approach, the state would also need to meet the other CZARA requirements for using a voluntary, incentive-based programs as part of the state's coastal nonpoint program. This includes describing the process the state will use to monitor and track implementation of the voluntary practices, providing a legal opinion stating it has the necessary back-up authority to require implementation of the voluntary measures, and demonstrating a commitment to use that back-up authority.

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- Provide better maps of non-fish bearing streams and other sensitive sites and structures to increase awareness of these sensitive areas that need protection among the aerial applicator community; and
- Employ GPS technology, linked to maps of non-fish bearing streams to automatically shut off nozzles before crossing non-fish bearing streams.

If Oregon chooses a voluntary approach, the state would also need to meet the other CZARA requirements for using a voluntary, incentive-based programs as part of the state's coastal nonpoint program. This includes describing the process the state will use to monitor and track implementation of the voluntary practices, providing a legal opinion stating it has the necessary back-up authority to require implementation of the voluntary measures, and demonstrating a commitment to use that back-up authority.